

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 22-12796

RICHARD VALLE,

Plaintiff-Appellee,

versus

3M COMPANY,

Defendant-Appellant.

OPPOSED MOTION TO HOLD APPEAL IN ABEYANCE

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Defendant-Appellant 3M Company hereby certifies that the following is a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the cases on appeal, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

- 3M Company (MMM) – Defendant-Appellant
- 3M Occupational Safety LLC – Defendant/Non-appellant wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Holdings LLC – Defendant/Non-appellant wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Intermediate LLC – Defendant/Non-appellant wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo Technologies LLC – Defendant/Non-appellant wholly owned subsidiary of Defendant-Appellant 3M Company
- Aearo, LLC – Defendant/Non-appellant wholly owned subsidiary of Defendant-Appellant 3M Company

- Arevalo, Marcela J. – counsel for MDL Plaintiffs
- Aylstock Witkin Kreis & Overholtz – counsel for MDL Plaintiffs
- Aylstock, Bryan Frederick – counsel for MDL Plaintiffs
- Barr, Brian H. – counsel for MDL Plaintiffs
- Barriere, Ashley – counsel for Plaintiff-Appellee Valle and MDL Plaintiffs
- Beall, Charles Franklin, Jr. – counsel for Defendant-Appellant 3M Company
- Benton, Diana Clough – counsel for Defendants/Non-appellants
- Berg, Nicole – counsel for Plaintiff-Appellee Valle and MDL Plaintiffs
- Bhimani, Jay L. – counsel for Defendant-Appellant 3M Company
- Bouk, Winston Troy – counsel for MDL Plaintiffs
- Bradford, Bobby J. – counsel for MDL Plaintiffs
- Bradley Arant Boult Cummings – counsel for Defendant 3M Company
- Branscome, Kimberly O. – counsel for Defendant-Appellant 3M Company
- Brock, Robert C. – counsel for Defendants/Non-appellants
- Buchanan, David R. – counsel for MDL Plaintiffs
- Burns, Michael A. – counsel for MDL Plaintiffs
- Buxner, Evan D. – counsel for MDL Plaintiffs
- Cantero, Raoul G. – counsel for Defendant 3M Company
- Carter, Cole T. – counsel for Defendants/Non-appellants

- Cartmell, Thomas P. – counsel for MDL Plaintiffs
- Castiglia, Craig – counsel for Defendant-Appellant 3M Company
- Ciresi Conlin LLP – counsel for MDL Plaintiffs
- Clark Love & Hutson – counsel for MDL Plaintiffs
- Clement, Paul D. – counsel for Defendant-Appellant 3M Company
- Clement & Murphy, PLLC – counsel for Defendant-Appellant 3M Company
- Cooper, David M. – counsel for MDL Plaintiffs
- Cornell, Katherine Lindsey – counsel for MDL Plaintiffs
- Czak, Steven C. – counsel for Defendants/Non-appellants
- Dechert LLP – counsel for Defendant-Appellant 3M Company
- De Paulo, Tabitha J. – counsel for Defendants/Non-appellants
- Dylewski, Frank – counsel for Plaintiff-Appellee Valle and MDL Plaintiffs
- Elizabeth, Sierra – counsel for Defendants/Non-appellants
- Ellis, Robert P. – counsel for Defendants/Non-appellants
- Esfandiarifard, Saghar – counsel for Defendants/Non-appellants
- French, Yates M. – counsel for Defendants/Non-appellants
- Glass, David M. – counsel for the United States of America
- Gori Julian & Associates – counsel for MDL Plaintiffs
- Gunderson, Karl B. – counsel for Defendants/Non-appellants

- Heinz, Noah – counsel for Plaintiff-Appellee Valle
- Hicks, Jr., George W. – counsel for Defendants/Non-appellants
- Hill, Thomas Larry – counsel for Defendant-Appellant 3M Company
- Hodge, Leigh Anne – counsel for Defendant 3M Company
- Hoekstra, Jennifer M. – counsel for MDL Plaintiffs
- Hutson, Shelley Van Natter – counsel for MDL Plaintiffs
- Jones, Hon. Gary R. – U.S. Magistrate Judge for the Northern District of Florida
- Karis, Hariklia – counsel for Defendants/Non-appellants
- Keller, Ashley – counsel for Plaintiff-Appellee Valle and MDL Plaintiffs
- Keller Postman LLC – counsel for Plaintiff-Appellee Valle and MDL Plaintiffs
- Kelly, Maxwell H. – counsel for MDL Plaintiffs
- Kim, Mary H. – counsel for Defendant-Appellant 3M Company
- Kirkland & Ellis LLP – counsel for Defendants/Non-appellants
- Kolsky, Joshua M. – counsel for the United States of America
- Laminack Pirtle & Martines – counsel for MDL Plaintiffs
- Lauria, Jessica C. – counsel for Defendant 3M Company
- Leach, Garret A. – counsel for Defendants/Non-appellants
- Leuthauser, Nolan M. – counsel for Defendants/Non-appellants

- Levin Papantonio Rafferty – counsel for MDL Plaintiffs
- Messa & Associates, P.C. – counsel for MDL Plaintiffs
- Messa, Joseph L. – counsel for MDL Plaintiffs
- Milne, Jason M. – counsel for MDL Plaintiffs
- Mitchell, Kasdin Miller – counsel for Defendants/Non-appellants
- Moreland, William Michael – counsel for MDL Plaintiffs
- Mostyn Law – counsel for MDL Plaintiffs
- Moore Hill & Westmoreland – counsel for Defendant-Appellant 3M Company
- Murphy, Erin E. – counsel for Defendant-Appellant 3M Company
- Nomellini, Mark J. – counsel for Defendants/Non-appellants
- Onder Law LLC – counsel for MDL Plaintiffs
- Ozurovich, Allison K. – counsel for Defendant-Appellant 3M Company
- Pirtle, Thomas W. – counsel for MDL Plaintiffs
- Pulaski Law Firm – counsel for MDL Plaintiffs
- Quinn Emanuel Urquhart & Sullivan LLP – counsel for MDL Plaintiffs
- Rafferty, Troy Alan – counsel for MDL Plaintiffs
- Rivera, Maria P. – counsel for Defendants/Non-appellants
- Rodgers, Hon. M. Casey – U.S. District Judge for the Northern District of Florida

- Rogers, Brenton A. – counsel for Defendants/Non-appellants
- Sacchet, Michael A. – counsel for MDL Plaintiffs
- Seeger, Christopher A. – counsel for MDL Plaintiffs
- Seeger Weiss LLP – counsel for MDL Plaintiffs
- Seeley, Caleb A. – counsel for MDL Plaintiffs
- Smith, Renee D. – counsel for Defendants/Non-appellants
- Snidow, John James – counsel for Plaintiff-Appellee Valle
- Steinberg, Matthew P. – counsel for Defendant-Appellant 3M Company
- Tam, Jonathan S. – counsel for Defendant-Appellant 3M Company
- Thornburgh, Daniel J. – counsel for MDL Plaintiffs
- Valle, Richard – Plaintiff-Appellee
- Van Fleteren, Haley J. – counsel for Defendant-Appellant 3M Company
- Wagstaff & Cartmell – counsel for MDL Plaintiffs
- White & Case – counsel for Defendant-Appellant 3M Company
- Wilson, Quinn Robert – counsel for MDL Plaintiffs
- Zanello, Lindsay N. – counsel for Defendant-Appellant 3M Company

Defendant-Appellant 3M Company states that it is a corporation whose shares are publicly traded (NYSE: **MMM**). 3M Company does not have a parent corporation and no publicly held corporation owns 10% or more of 3M's stock.

Respectfully submitted,

s/Paul D. Clement
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Counsel for Defendant-Appellant

September 6, 2023

MOTION TO HOLD APPEAL IN ABEYANCE

Defendant-Appellant 3M Company (“3M”) respectfully moves the Court to hold this appeal in abeyance pending settlement talks. On August 29, 2023, lead counsel for Plaintiffs and Defendants in the *In re 3M Combat Arms Earplugs* MDL entered into a Master Settlement Agreement. *See* Case No. 3:19-md-2885, ECF 3809-1 (Aug. 29, 2023) (filed under seal). That agreement may obviate the need for this Court to resolve this appeal.

In a number of other appeals and one petition for review under 28 U.S.C. §1292(b) currently pending before this Court, the parties to those matters have filed joint motions to hold the appeals in abeyance because the Master Settlement Agreement may obviate the need for this Court to decide those matters. *See* 11th Cir. No. 23-12630, *Wilburn et al. v. 3M Co.*, Dkt.20 (filed Sept. 1, 2023); 11th Cir. No. 22-12273, *Sylvain v. 3M Co., et al.*, Dkt.20 (filed Sept. 1, 2023); 11th Cir. No. 22-12812, *Adkins v. 3M Co., et al.*, Dkt.54 (filed Sept. 1, 2023); 11th Cir. No. 22-12719, *Wilkerson v. 3M Co., et al.*, Dkt.49 (filed Sept. 1, 2023); 11th Cir. No. 22-13895, *Vilsmeyer, et al., v. 3M Co., et al.*, Dkt.45 (filed Sept. 1, 2023); 11th Cir. No. 23-90001, *3M Co. v. Aaby, et al.*, Dkt.15 (filed Sept. 1, 2023); 11th Cir. No. 21-13131, *Keefer v. 3M Co., et al.*, Dkt.85 (filed Sept. 2, 2023); 11th Cir. No. 21-13133, *Hacker v. 3M Co., et al.*, Dkt.80 (filed Sept. 2, 2023); 11th Cir. No. 21-13135, *Estes v. 3M Co. et al.*, Dkt.84 (filed Sept. 2, 2023); 11th Cir. No. 21-12517, *Baker v. 3M*

Co. et al., Dkt.94 (filed Sept. 2, 2023); 11th Cir. No. 22-11897, *Bonenfant v. 3M Co., et al.*, Dkt.40 (filed Sept. 5, 2023). 3M believes that holding those matters in abeyance will both conserve judicial resources and allow for orderly implementation of the Master Settlement Agreement.

With respect to holding this appeal in abeyance, Mr. Valle, unlike the plaintiffs in all those other appeals, has indicated that he is opposed to such a stay at this time.

3M respectfully submits that this Court should exercise its discretion to hold this appeal in abeyance pending settlement talks. As with the matters listed above, doing so with respect to this appeal would conserve judicial resources, and it would enhance the prospect of global resolution of the broader matter by facilitating the implementation of the settlement in the short term. Both provide ample grounds for this Court to stay the appeal while settlement efforts continue.

This court and others have exercised their discretion to hold appeals in abeyance where other proceedings or settlement might eliminate the need for an appeal to be resolved. *See, e.g., United States v. Republic of Honduras*, 2023 WL 4567252, at *1 (11th Cir. July 18, 2023) (en banc) (“We ordered that this appeal be held in abeyance pending the Supreme Court’s decision”); *Caremark, Inc. v. Coram Healthcare Corp.*, 113 F.3d 645, 647 n.1 (7th Cir. 1997) (noting that court suspended consideration of an appeal because of “pending settlement negotiations”); *cf. Ctr. for Biological Diversity v. Env’t Prot. Agency*, 56 F.4th 55, 70-71 (D.C. Cir. 2022) (“We

may hold cases in abeyance at the parties' request to afford an agency time to fulfill its settlement undertakings and perhaps thereby obviate the need to decide pending petitions for review.”). That practice promotes the conservation of scarce judicial resources and promotes the voluntary resolution of disputes.

Holding this appeal in abeyance while settlement efforts continue would serve those same interests. It “is a cardinal virtue of Article III courts to avoid unnecessary decisions and to promote voluntary resolutions where appropriate.” *Ctr. for Biological Diversity*, 56 F.4th at 71. If this Court elects to hold the appeal in abeyance, 3M would, in due course, file a subsequent motion asking the Court either to dismiss the appeal or lift the stay.

CONCLUSION

For the above-discussed reasons, the Court should hold the appeal in abeyance.

Respectfully submitted,

s/Paul D. Clement
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September 6, 2023

**CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION**

I hereby certify that:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 660 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font.

September 6, 2023

s/Paul D. Clement
Paul D. Clement

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement
Paul D. Clement